

OFFICE OF THE SECRETARY OF STATE

SHEMIA FAGAN
SECRETARY OF STATE

CHERYL MYERS
DEPUTY SECRETARY OF STATE



ARCHIVES DIVISION

STEPHANIE CLARK
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 690
WATER RESOURCES DEPARTMENT

FILED

03/24/2023 2:45 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Amends the Division 10 rules for Appropriation And Use Of Ground Water [Corrected]

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 05/22/2023 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

CONTACT: Kelly Mainz
971-718-7087

725 Summer ST NE A
Salem, OR 97301

Filed By:
kelly mainz
Rules Coordinator

WRD_DL_rule-coordinator@water.oregon.gov

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 04/24/2023

TIME: 5:00 PM - 7:00 PM

OFFICER: Kelly Mainz

HEARING LOCATION

ADDRESS: Blue Mountain Community College, 311 N Columbia St., Milton-Freewater, OR 97862

SPECIAL INSTRUCTIONS:

If you wish to comment publicly during the hearing, please email Kelly Mainz at the contact on this notification. The meeting location is accessible to persons with disabilities. Language services also are available upon request. A request for an interpreter for the hearing impaired, other language services, or other accommodations for persons with disabilities should be made at least 48 hours before the meeting to Kelly Mainz at WRD_DL_rule-coordinator@water.oregon.gov.

DATE: 04/26/2023

TIME: 5:00 PM - 7:00 PM

OFFICER: Kelly Mainz

HEARING LOCATION

ADDRESS: Harney County Community Center, 478 N Broadway Ave, Burns, OR 97720

SPECIAL INSTRUCTIONS:

If you wish to comment publicly during the hearing, please email Kelly Mainz at the contact on this notification. The meeting location is accessible to persons with disabilities. Language services also are available upon request. A request for an interpreter for the hearing impaired, other language services, or other accommodations for persons with disabilities should be made at least 48 hours before the meeting to Kelly Mainz at WRD_DL_rule-coordinator@water.oregon.gov.

DATE: 05/04/2023

TIME: 5:00 PM - 7:00 PM

OFFICER: Kelly Mainz

HEARING LOCATION

ADDRESS: Klamath County Event Center , 3531 South 6th Street, Klamath Falls, OR 97603

SPECIAL INSTRUCTIONS:

If you wish to comment publicly during the hearing, please email Kelly Mainz at the contact on this notification. The meeting location is accessible to persons with disabilities. Language services also are available upon request. A request for an interpreter for the hearing impaired, other language services, or other accommodations for persons with disabilities should be made at least 48 hours before the meeting to Kelly Mainz at WRD_DL_rule-coordinator@water.oregon.gov.

DATE: 05/08/2023

TIME: 3:00 PM - 5:00 PM

OFFICER: Kelly Mainz

HEARING LOCATION

ADDRESS: Oregon Department of State Lands , 775 Summer St NE #100, Salem, OR 97301

SPECIAL INSTRUCTIONS:

This meeting will be in a Hybrid format. Please register on the zoom link attached to join online. If you wish to comment publicly during the hearing, please email Kelly Mainz at the contact on this notification. If you wish to comment publicly during the hearing, please email Kelly Mainz at the contact on this notification. The meeting location is accessible to persons with disabilities. Language services also are available upon request. A request for an interpreter for the hearing impaired, other language services, or other accommodations for persons with disabilities should be made at least 48 hours before the meeting to Kelly Mainz at WRD_DL_rule-coordinator@water.oregon.gov.

NEED FOR THE RULE(S)

The proposed rules are necessary because the current Division 10 rules do not conform to the Critical Ground Water Area (CGWA) processes outlined in Oregon Revised Statutes (ORS) 537.730 – 537.742. These statutes were last updated in 1991; the previous Division 10 rule update was in 1990. The proposed rules conform to the current statutes.

These rules outline the procedure that the Oregon Water Resources Department (OWRD) and the Water Resources Commission (WRC) can take to design a CGWA. ORS 537.730 lays out several conditions for a CGWA designation. If one or more of these conditions exist within an area of the state, then a CGWA can be designated. A CGWA allows the OWRD and WRC to establish corrective control provisions for the CGWA via rule writing. A CGWA designation by the OWRD will be based on any available records, including, but not limited to, reports, studies, maps, data, and model results, to select the appropriate corrective control actions. The proposed rules only provide the procedure for designating a CGWA and do not designate any area of the state as a CGWA.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

None.

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

OWRD does not anticipate any impact on Racial Equity. The proposed Division 10 rules only provide the procedure by which OWRD and the WRC would designate an area of the state as a CGWA. Further analysis will be needed to assess

the specific effect on Racial Equity when the WRC proposes to declare an area of the state a CGWA, which could include corrective control provisions laid out in ORS 537.730 – 537.742.

FISCAL AND ECONOMIC IMPACT:

OWRD does not anticipate any fiscal impact from the proposed Division 10 rules. The proposed Division 10 rules only provide the procedure by which OWRD and the WRC would declare an area of the state a CGWA. Further analysis will be needed to assess the fiscal impact when the WRC proposes to declare an area of the state a CGWA, which could include corrective control provisions laid out in ORS 537.730 – 537.742.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

(1) State Agencies: The OWRD will need staff time to develop the rules for designating a Critical Groundwater Area (CGWA) and adopt these rules following the Oregon Administrative Procedures Act. In addition, the OWRD will need to use staff time to develop the records showing that a condition under Oregon Revised Statutes 537.735(3)(a-f) is met for a CGWA declaration. Units of local government and members of the public will not have a cost of compliance under these rules. The proposed rules are the procedures that OWRD and the WRC must follow to declare an area of the state a CGWA.

(2)(a) No small businesses will be affected by adopting these rules. If the WRC adopts rules declaring an area of the state a CGWA, small businesses could be affected. The proposed Division 10 rules will not affect small businesses because they specify the procedures the OWRD and WRC must follow to designate a CGWA.

2(b) None. The proposed rules impose no reporting, recordkeeping, or administrative requirements on small businesses

2(c) None. The proposed rules impose no costs or other requirements on small businesses.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

The Rulemaking Advisory Committee (RAC), which helped develop the rules and fiscal impact statement, included representatives from more than one small business. Other small businesses are being allowed to provide comments on the rules during the public comment period.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

690-010-0045, 690-010-0050, 690-010-0053, 690-010-0054, 690-010-0070, 690-010-0100, 690-010-0110, 690-010-0120, 690-010-0130, 690-010-0140, 690-010-0150, 690-010-0160, 690-010-0170, 690-010-0180, 690-010-0190, 690-010-0200, 690-010-0210, 690-010-0220, 690-010-0230, 690-010-0240

REPEAL: 690-010-0045

RULE SUMMARY: Rule repealed to align division with statute.

CHANGES TO RULE:

690-010-0045

Hearings and Protests

Rules and regulations governing the filing of protests or petitions and procedures to be followed in hearings as required by ORS Chapter 183 and division 1.

Statutory/Other Authority: ORS 536, 543

Statutes/Other Implemented:

REPEAL: 690-010-0050

RULE SUMMARY: Rule repealed to align division with statute.

CHANGES TO RULE:

~~690-010-0050~~

~~Initiation of Proceeding for Determination of a Critical Groundwater Area - Notification~~

~~(1) A proceeding for the determination of a critical ground water area shall be initiated by a Notification from the Water Resources Director.¶¶~~

~~(2) The Notification shall include:¶¶~~

~~(a) A description of the proposed exterior boundaries of the area for which, the proceeding is initiated, referenced to the U.S. Public Lands Survey;¶¶~~

~~(b) Citation to the specific statutory provision or provisions under which the proceeding is brought;¶¶~~

~~(c) The preliminary findings indicating why the area described may be a critical ground water area;¶¶~~

~~(d) A general description of the nature of the ground water reservoir which is the subject of the determination;¶¶~~

~~(e) The effective date and duration of the Notification. In no case shall the Notification have a duration greater than 270 days;¶¶~~

~~(f) A statement concerning applications in the area and reservoir in question which were filed in the Water Resources Department prior to the effective date of the Notification, but which had not received permits prior to that date. Such statement shall explain the applicants' options which include:¶¶~~

~~(A) Withdrawing the application with refund of any submitted recording fees; or¶¶~~

~~(B) Requesting deferral of action on the application until a determination of a critical ground water area; or¶¶~~

~~(C) Requesting a hearing on the application with the understanding that permit denial will result in rejection of the application. Failure to request a specific option will result in the department taking no action on the application until the Commission takes action on the area in question.¶¶~~

~~(g) A statement concerning applications in the area and reservoir in question which are submitted on or after the effective date of the Notification. The statement shall explain the applicants' options which include:¶¶~~

~~(A) Withdrawing the application with refund of all related fees; or¶¶~~

~~(B) Requesting deferral of permit action until a determination of a critical ground water area; or¶¶~~

~~(C) Requesting a hearing on the application with the understanding that permit denial will result in rejection of the application. Failure to request a specific option will result in the department taking no action on the application until the Commission takes action on the area in question.¶¶~~

~~(h) Upon receipt of a request for hearing under subsection (2)(f) or (g) of this rule, the Director shall schedule and conduct the hearing.¶¶~~

~~(3) The Notification shall be distributed by:¶¶~~

~~(a) Publication at least once each week for two consecutive weeks in a newspaper having general circulation in the area in question;¶¶~~

~~(b) Mailing by regular or certified mail to each legal claimant or appropriator of ground water in the area in question;¶¶~~

~~(c) Mailing by regular or certified mail to each applicant for a permit to appropriate water from the ground water reservoir and area in question;¶¶~~

~~(d) Mailing by regular or certified mail to the governing body and planning department(s) of the affected local governments within which all or part of the area in question is located;¶¶~~

~~(e) Mailing by regular or certified mail to each licensed water well constructor licensed to construct wells in the State of Oregon;¶¶~~

~~(f) Mailing by regular or certified mail to the state legislative delegates representing the people of the area in question.¶¶~~

~~(4) The Notification initiating a proceeding for determination of a critical ground water area shall be recorded in the Special Order Record of the Water Resources Director.¶¶~~

~~[Publications: Publications referenced are available from the agency.]~~

~~Statutory/Other Authority: ORS 183, 197, 536, 537~~

~~Statutes/Other Implemented:~~

REPEAL: 690-010-0053

RULE SUMMARY: Rule repealed to align division with statute.

CHANGES TO RULE:

~~690-010-0053~~

~~Process Options-~~

~~Within 270 days of the issuance of Notification, the Commission shall:¶~~

~~(1) Determine that a critical ground water area is not warranted and inform those parties who received the Notification of the Commission's determination.¶~~

~~(2) Conduct a public hearing to withdraw the ground water from further appropriation as authorized by ORS 536.410.¶~~

~~(3) Conduct a public hearing to amend the appropriate basin program to classify the ground water in question as authorized by ORS 536.310 and 536.340.¶~~

~~(4) Complete sections 2 and/or 3 of this rule and proceed at some future date with additional hearings necessary to fulfill the requirements of ORS 537.730 and issue a critical ground water area order.¶~~

~~(5) Conduct a public hearing and issue a critical ground water area order and/or adopt rules.~~

~~Statutory/Other Authority: ORS 197, 536~~

~~Statutes/Other Implemented:~~

REPEAL: 690-010-0054

RULE SUMMARY: Rule repealed to align division with statute.

CHANGES TO RULE:

~~690-010-0054~~

~~Public Hearing Requirements~~

~~(1) At least one public hearing shall be held within or near the proposed critical ground water area.¶~~

~~(2) Notice of any hearing associated with critical ground water area proceedings shall be distributed as provided in OAR 690-010-0050(3).~~

~~Statutory/Other Authority: ORS 197, 536~~

~~Statutes/Other Implemented:~~

REPEAL: 690-010-0070

RULE SUMMARY: Rule repealed to align division with statute.

CHANGES TO RULE:

~~690-010-0070~~

~~Local Government Coordination~~

~~(1) Proceedings for the determination of a critical ground water area include Notification, rulemaking, the issuance or modification of an order, or other related activities.¶¶~~

~~(2) The Director and Commission shall assure that proceedings for the determination of a critical ground water area meet the requirements established in OAR 690-005-0045 (Standards for Goal Compliance and Compatibility with Comprehensive Plans). Further, the Commission shall:¶¶~~

~~(a) Upon notification, request the planning director of affected local governments to submit applicable policies, provisions, or procedures from acknowledged comprehensive plans which address and provide guidance for mitigating ground water problems;¶¶~~

~~(b) Accommodate comprehensive plans (i.e., areas of planned growth and priority land uses) to the extent possible within the physical constraints of the ground water resource and the Commission's responsibilities under ORS 537.525, in adopting rules or issuing orders to manage or control water use in established or potential critical ground water area;¶¶~~

~~(c) Instruct the planning directors of affected local governments how comprehensive plans, maps, ordinances, and/or land use approval procedures may need to be amended to:¶¶~~

~~(A) Reflect the physical constraints of ground water resources in the critical area;¶¶~~

~~(B) Ensure compliance with restrictions in the Notification, withdrawal order, classification, or critical ground water area order; and¶¶~~

~~(C) Reduce the potential for future ground water problems within affected localities.¶¶~~

~~(d) Consider how local government participation could enhance the effectiveness of managing the area;¶¶~~

~~(e) Distribute the final critical ground water area rule and/or order to the county clerk and the planning director(s) of affected local governments.¶¶~~

~~(3) In the event of a land use dispute, as defined in OAR 690-005-0015 (Definitions), the Director and Commission shall follow procedures in 690-005-0040 (Resolution of Land Use Disputes).~~

~~Statutory/Other Authority: ORS 197, 536~~

~~Statutes/Other Implemented:~~

ADOPT: 690-010-0100

RULE SUMMARY: This new rule describes the purpose of OAR Chapter 690 Division 10.

CHANGES TO RULE:

690-010-0100

Purpose

The purpose of these rules is to guide implementation of the critical ground water area statutes, ORS 537.730 to 537.742.

Statutory/Other Authority: ORS 536.027, ORS 537.730

Statutes/Other Implemented: ORS 537.730

ADOPT: 690-010-0110

RULE SUMMARY: This new rule defines terms used in OAR Chapter 690 Division 10 and ORS 537.730 to 537.742.

CHANGES TO RULE:

690-010-0110

Definitions

In addition to the definitions in OAR 690-008-0001, the following definitions apply to critical ground water area designations conducted pursuant to ORS 537.730 to 537.742 and these rules, unless the context requires otherwise: ¶

(1) "Affected local government" means any city, county, or metropolitan service district formed under ORS Chapter 268 or an association of local governments performing land use planning functions under ORS 195.025 located within the boundaries of the proposed critical ground water area. ¶

(2) "Groundwater right" means a permit, certificate, decree, or certificate of ground water registration as provided in ORS 537.610 authorizing the appropriation and use of ground water. ¶

(3) "Ground water reservoir" means a designated body of standing or moving ground water having exterior boundaries which may be ascertained or reasonably inferred as provided in OAR 690-010-0130. ¶

(4) "Person" means individuals, corporations, associations, firms, partnerships, limited liability companies, joint stock companies and Indian tribes. ¶

(5) "Exempt User" means any person who exercises the right to use groundwater pursuant to the exemption in ORS 537.545.

Statutory/Other Authority: ORS 536.027, ORS 537.730

Statutes/Other Implemented: ORS 537.730

ADOPT: 690-010-0120

RULE SUMMARY: This new rule incorporates and clarifies the statutory requirements under ORS 537.730 for designating an area of the state a critical ground water area.

CHANGES TO RULE:

690-010-0120

Required Criteria for Designation of Critical Ground Water Area

(1) The Commission may adopt rules to designate an area of the state a critical ground water area if any of the requirements under ORS 537.730(1)(a)-(g) are met. These requirements are: ¶

(a) Ground water levels in the area in question are declining or have declined excessively;/ ¶

(b) The Water Resources Department finds a pattern of substantial interference between wells within the area in question;/ ¶

(c) The department finds a pattern of interference or potential interference between wells of ground water claimants or appropriators within the area in question with the production of geothermal resources from an area regulated under ORS chapter 522;/ ¶

(d) The department finds a pattern of substantial interference between wells within the area in question and;/ ¶

(A) An appropriator of surface water whose water right has an earlier priority date; or ¶

(B) A restriction imposed on surface water appropriation or a minimum perennial streamflow that has an effective date earlier than the priority date of the ground water appropriation ¶

(e) The available ground water supply in the area in question is being or is about to be overdrawn;/ ¶

(f) The purity of the ground water in the area in question has been or reasonably may be expected to become polluted to an extent contrary to t¶

(g) Ground water temperatures in the area in question are expected to be, are being or have been substantially altered except as specified in ORS 537.796. ¶

(2) For the purposes of ORS 537.730(1)(d)(A), a surface water right with an earlier priority date means a certificated and permitted water right including instream water rights, inchoate transfers and determined claims, the source of which is surface water, including springs, streams, lakes, reservoirs, rivers and a "surface water diversion" as provided in OAR 690-008-0001(4). ¶

(3) For purposes of the determination under ORS 537.730(1)(d)(B), restrictions imposed on surface water appropriations' include but not limited to, scenic waterways and other types of legally protected surface water flows.

Statutory/Other Authority: ORS 536.027, ORS 537.730

Statutes/Other Implemented: ORS 537.730

RULE SUMMARY: This new rule describes the additional requirements of the rulemaking process applicable to rulemaking actions to designate an area of the state a critical ground water area.

CHANGES TO RULE:

690-010-0130

Additional Requirements for Critical Ground Water Area Rulemaking Process

(1) The rulemaking process for designation of a critical ground water area is governed by the applicable provisions under ORS Chapter 183, ORS 537.730 to 537.742, OAR Chapter 690, Division 001, and these rules. ¶

(2) A rule adopted by the Water Resource Commission shall: ¶

(a) Define the boundaries of the critical groundwater area and shall indicate which of the groundwater reservoirs located either in whole or in part within the area in question are included within the critical groundwater area. Any number of groundwater reservoirs which either wholly or partially overlie one another may be included within the same critical groundwater area. ¶

(b) Contain a provision requiring a periodic review of conditions in the critical ground water area. The review shall be in sufficient detail to evaluate the continuing need for the critical ground water area designation and shall occur no less frequently than once every 10 years. ¶

(3) For the purposes of ORS 537.735(1)(a) the exterior boundaries of groundwater reservoirs may be reasonably inferred or ascertained: ¶

(a) According to the presence of physical natural boundaries, hydrological conditions, or recharge or discharge areas; or ¶

(b) Administratively by defining an affected area that does not have boundaries defined by natural features. ¶

(c) Additionally, to the extent that sub-areas wholly contained within the designated Critical Ground Water Area must be defined to allow for implementation of corrective control provisions, these sub-area boundaries will also be reasonably inferred or ascertained as in 690-010-0130 (3)(a) or (3)(b). ¶

(4) In addition to the requirements under section (1), prior to Commission adoption of a rule designating a critical ground water area, the Department shall: ¶

(a) Coordinate with the affected local government using the process described in OAR 690-010-0140; and ¶

(b) Consult, as described in OAR 690-010-0150, with any federally recognized Indian tribes; ¶

(c) Provide and present to the Commission a report, based on the best available science and information, identifying and characterizing the groundwater reservoirs subject to the proposed critical ground water designation; states any findings the Department is proposing to make under ORS 537.730(1)(a) - (g); and if applicable, states the Department's proposal for any of the corrective control provisions under ORS 537.735(3)(a) - (f). ¶

(d) The Department shall post the report presented to the Commission on the Department's website at least 60 days prior to the public hearing as provided in section (6) of this rule. ¶

(5) In addition to the notice requirements under ORS 183.335, the Department shall give notice of the proposed rules by regular mail to: ¶

(a) The owners of record of all groundwater registrations, inchoate transfers, permits and certificates for groundwater use within the affected area. ¶

(b) For the purpose of providing notice by regular mail, the Department may rely upon the available county tax lot ownership information for parcels underlying or overlapping with water right places of use in the proposed critical ground water area. ¶

(c) Each well constructor licensed under ORS 537.747. ¶

(6) At least 60 days after notice of the proposed rules is provided under ORS 183.335, ORS 537.730(3) and these rules, the Department shall hold a public hearing within each county in which the proposed critical ground water area lies. Notice of the hearing shall be provided in a manner consistent with ORS 537.730(3) and ORS 183.335(3)(b).

Statutory/Other Authority: ORS 536.027, ORS 537.730, ORS 537.735, ORS 537.742

Statutes/Other Implemented: ORS 537.730, ORS 183.335, ORS 537.780

ADOPT: 690-010-0140

RULE SUMMARY: This new rule describes the process and requirements of coordination with affected local government to adoption of a rule designating an area of the state a critical ground water area.

CHANGES TO RULE:

690-010-0140

Land Use Planning Coordination with Affected Local Government

(1) Prior to notification of the proposed rules under ORS 183.335, the Department shall coordinate with the affected local government pursuant to the applicable provisions under ORS Chapter 197 (State Agency Planning Responsibilities), OAR Chapter 690, Division 005 (Compliance With Statewide Planning Goals, Compatibility With Comprehensive Plans, And Coordination On Land Use Matters), and these rules. ¶

(2) To facilitate coordination as described in the State Agency Coordination Program, the Department shall provide the following information to affected local governments: ¶

(a) Boundaries of the proposed critical ground water area; ¶

(b) A list of any groundwater reservoirs located either in whole or in part within the proposed critical ground water area; ¶

(c) A list of subsections under ORS 537.730 relied upon for the designation of the proposed critical ground water area; ¶

(d) A copy of the report presented to the commission in OAR 690-010-0130(5)(c); ¶

(e) A list of any proposed corrective control provisions to be included in the proposed critical ground water area rule under ORS 537.735.

Statutory/Other Authority: ORS 536.027, ORSA 537.730

Statutes/Other Implemented: ORSA 537.730, ORS 537.735

ADOPT: 690-010-0150

RULE SUMMARY: This new rule describes the consultation process with a Federally Recognized Tribe within the basin.

CHANGES TO RULE:

690-010-0150

Consultation with Federally Recognized Tribes

(1) Prior to convening the Rules Advisory Committee, the department shall consult with any federally recognized tribes within the basin and consult with any federally recognized tribes who have expressed an interest in the proposed Critical Ground Water Area. ¶

(2) To aid with consultation the department will provide the information in 690-010-0140(2)(a) - (e) to the federally recognized tribe and any interested federally recognized tribes.

Statutory/Other Authority: ORS 536.027, ORS 537.730

Statutes/Other Implemented: ORS 536.027, ORS 537.730

ADOPT: 690-010-0160

RULE SUMMARY: This new rule incorporates the statutory requirements for a rule designating an area of the state a critical ground water area, references the available corrective control provisions, outlines the timing of rule filing under ORS 537.740, and describes the required frequency of rule review.

CHANGES TO RULE:

690-010-0160

Content, Filing, and Review of Adopted Critical Ground Water Area Rules

(1) Any rule adopted by the Commission under ORS 537.730 and these rules shall meet the requirements of ORS 537.735. ¶

(2) A critical ground water area rule may include any one or more of the corrective control provisions under ORS 537.735(3)(a)-(f). These corrective controls provisions may include: ¶

(a) A provision closing the critical ground water area to any further appropriation of ground water, in which event the commission shall thereafter refuse to accept any application for a permit to appropriate ground water located within such critical area./ ¶

(b) A provision determining the permissible total withdrawal of ground water in the critical area each day, month or year./ ¶

(c) The disposition of any application for a water right permit for the use of water in the area that is pending at the time the commission initiates the rulemaking process or that is received during the rulemaking process. ¶

(d) Any one or more provisions making such additional requirements as are necessary to protect the public welfare, health and safety in accordance with the intent, purposes and requirements of ORS 537.505 to 537.795 and 537.992./ ¶

(e) A provision closing all or part of the critical ground water area to further appropriation of ground water for its thermal characteristics. ¶

(f) A provision determining the permissible change in thermal characteristics of ground water in all or part of the critical ground water area each day, month or year. Insofar as may be reasonably done, the Water Resources Director shall apportion the permissible total temperature impact among those appropriators whose exercise of valid rights in the critical area affect the thermal characteristics of the ground water, in accordance with the relative dates of priority of such rights./ ¶

(3) The Department shall file a copy of any rules designating a critical ground water area with the Secretary of State as provided in ORS 183.355 and with the county clerk of each county within which any part of a critical ground water area lies, and the county clerk shall record the designation in the deed records of the county. ¶

(4) The Department shall conduct a periodic review of conditions within the critical ground water area no less than once every 10 years to evaluate the continuing need for the critical ground water area. ¶

(5) In addition to the requirements of section (4), if the Commission adopts a critical ground water area rule that limits groundwater use, the Department shall review the rule at least once every three years. The review process shall include public notice and an opportunity to comment on the rule.

Statutory/Other Authority: ORS 536.027, ORS 537.730

Statutes/Other Implemented: ORS 537.730, ORS 537.735, ORS 537.740, ORS 537.780

RULE SUMMARY: This new rule describes the process and requirements of an Initial Notification of Proposed Corrective Actions.

CHANGES TO RULE:

690-010-0170

Initial Notification of Proposed Corrective Actions

(1) At any time after the Commission adopts a rule designating a critical ground water area, the Commission may initiate a contested case proceeding to propose limitation on groundwater rights or limitations on Exempt Users in the designated area. A contested case hearing shall be initiated by issuance of an Initial Notification of Proposed Corrective Actions followed by a Notice of Proposed Corrective Actions. ¶

(2) An Initial Notification of Proposed Corrective Actions may be issued at any time after the Commission adopts a rule designating a critical ground water area, and prior to issuing a Notice of Proposed Corrective Actions. The Initial Notification of Proposed Corrective Actions shall identify corrective control provisions as specified in ORS 537.742(2)(a) - (f) that the Department believes will resolve the problems that resulted in the designation of a critical ground water area and will form the basis of a Notice of Proposed Corrective Actions as provided in OAR 690-010-0180. ¶

(3) The proposed corrective control provisions that limit the use of groundwater ground water in the critical ground water area that may be included in the Initial Notification of Proposed Corrective Actions are as follows: ¶

(a) A provision apportioning the permissible total withdrawal as established by rule under ORS 537.730, among the appropriators holding valid rights to ground water in the critical area in accordance with the relative dates of priority of such rights./ ¶

(b) A provision according preference, without reference to relative priorities, to withdrawals of ground water in the critical area for residential and livestock watering purposes first. Thereafter, the commission may authorize withdrawals of ground water in the critical area for other beneficial purposes, including agricultural, industrial, municipal other than residential, and recreational purposes, in such order as the commission considers advisable under the circumstances, so long as such withdrawal will not materially affect a properly designed and operating well with prior rights that penetrates the aquifer. ¶

(c) A provision reducing the permissible withdrawal of ground water by any one or more appropriators or wells in the critical area./ ¶

(d) Where two or more wells in the critical area are used by the same appropriator, a provision adjusting the total permissible withdrawal of ground water by such appropriator, or a provision forbidding the use of one or more of such wells completely./ ¶

(e) A provision requiring the abatement, in whole or part, or the sealing of any well in the critical area responsible for the admission of polluting materials into the ground water supply or responsible for the progressive impairment of the quality of the ground water supply by dispersing polluting materials that have entered the ground water supply previously./ ¶

(f) A provision requiring and specifying a system of rotation of use of ground water in the critical area. ¶

(4) In addition to proposed corrective control provisions as provided in subsection (3), the Department's Initial Notification of Proposed Corrective Actions must include: ¶

(a) Identification of the critical ground water area in which the corrective control provisions are proposed; ¶

(b) A statement describing the factors that led to the designation of the critical ground water area; ¶

(c) A description of the proposed corrective control provisions that the Department believes will resolve the problems that resulted in the designation of the critical ground water area; ¶

(d) A description of the geographic area in which corrective control provisions will be proposed; and ¶

(e) A description of how persons may request a Notice of Proposed Corrective Actions and the deadline for requesting such notice. ¶

(5) The Department shall give notice of its Initial Notice of Proposed Corrective Action(s) by: ¶

(a) Publication in a newspaper having general circulation in the area in which the corrective control provisions will be proposed, for a period of at least two weeks and not less than one publication each week. ¶

(b) Publication in the weekly notice published by the Department for four consecutive weeks. ¶

(c) First class mail to any affected local governments and to federally recognized tribes within or adjacent to the geographic area in which corrective actions are identified, and any other interested federally recognized tribes. ¶

(d) Holding a public meeting in the area, or as near as practicable to the area, in which the corrective control provisions will be proposed; and ¶

(e) Posting the Initial Notification of Proposed Corrective Actions on its website. ¶

(6) Persons requesting a copy of the Department's Notice of Proposed Corrective Actions must request a copy of the notice by the deadline specified in the Initial Notification of Proposed Corrective Actions. The request shall be

on a form provided by the Department on its website, and shall include information from the requestor that establishes whether: ¶

(a) The requestor holds a groundwater right within the area defined in the Initial Notification of Proposed Corrective Actions; ¶

(b) The requestor is an exempt user of groundwater; or ¶

(c) The requestor otherwise has an interest in the proceedings; and ¶

(d) The mailing address and electronic mail address to which the Department may mail and e-mail its Notice of Proposed Corrective Action and the requestor's preference for method of notification.

Statutory/Other Authority: ORS 536.027, ORS 537.742

Statutes/Other Implemented: ORS 537.742

RULE SUMMARY: This new rule describes the notice process and requirements for Notice of Proposed Corrective Actions.

CHANGES TO RULE:

690-010-0180

Notice of Proposed Corrective Actions

- (1) Following issuance and notification of the Initial Notification of Proposed Corrective Actions, and prior to implementation of any proposed corrective control provisions as may limit the use of groundwater in the critical ground water area, the Department shall issue a Notice of Proposed Corrective Actions proposing implementation of one or more corrective control provisions as specified in ORS 537.742(2)(a)- (f). ¶
- (2) The Notice of Proposed Corrective Actions is a notice for the purposes of ORS 183.415 and shall, in addition to those elements in ORS 183.415 and OAR 137-003-0505, include the following: ¶
- (a) A case caption that identifies the critical ground water area at issue including a citation to the rule establishing the critical ground water area and identification of each county in which the critical ground water area is located; ¶
- (b) A statement of the problem resulting in designation of the critical ground water area that may be addressed by the proposed control provisions the use of groundwater in the critical ground water area; ¶
- (c) A clear and concise description of the proposed corrective control provisions; ¶
- (d) A description of the area where the Director intends to implement the proposed corrective control provisions including attachment of any maps as necessary to clearly show the area of intended corrective control provisions such that groundwater right holders and exempt users located within the area of intended action may determine whether they will be affected by the proposed corrective control provisions; ¶
- (e) Identification of those groundwater right holders and exempt users whose rights to use groundwater may be limited by the proposed corrective control provisions; ¶
- (f) Findings of fact that support a conclusion that the problem(s) that resulted in designation of a critical ground water area may be corrected by implementing the corrective control provisions specified in the Notice of Proposed Corrective Actions; ¶
- (g) Reference scientific information that supports the agency's findings of fact; ¶
- (h) Conclusions of law based on the findings of fact and applicable law; ¶
- (i) An explanation of the reasoning that leads from the findings of fact to the conclusion that the problems that resulted in designation of the critical ground water area may be resolved by implementation of the corrective control provisions identified in the notice; ¶
- (j) A notice of right to a contested case hearing pursuant to ORS chapter 183.415 and OAR 137-003-0505; and ¶
- (k) A deadline for submitting a request for a contested case hearing; for persons holding a groundwater right or exempt users this deadline will be no less than 30 days after the Notice of Propose Corrective Actions is mailed; and ¶
- (l) A deadline for filing a Petition for Party Status as provided in OAR 690-010-0190; this deadline will be no less than 30 days after the Notice or Proposed Corrective Actions is mailed. ¶
- (3) The Department shall provide notification of the Notice of Proposed Corrective Actions by: ¶
- (a) Mailing copies of the Notice of Proposed Corrective Actions by certified or registered mail to groundwater right holders and exempt users whose wells are within the identified area in which corrective control provisions are proposed and whose use of groundwater will be limited by proposed corrective control provisions but only as the Department possesses contact information or may reasonably obtain contact information. ¶
- (b) Mailing copies of the Notice of Proposed Corrective Actions by regular mail to persons who have timely requested copies of the notice and who chose mail as their preferred method of contact as provided in OAR 690-010-0170(4). ¶
- (c) Emailing copies of the Notice of Proposed Corrective Actions to persons who have timely requested copies of the notice and who chose email as their preferred method of contact as provided in OAR 690-010-0170(4). ¶
- (d) Publication in the weekly notice published by the Department for four consecutive weeks. ¶
- (e) Publication on the Department's website.

Statutory/Other Authority: ORS 536.027, ORS 537.742

Statutes/Other Implemented: ORS 537.742

ADOPT: 690-010-0190

RULE SUMMARY: This new rule describes the process and requirements for requests for party standing to a contested case hearing on a Notice of Proposed Corrective Action.

CHANGES TO RULE:

690-010-0190

Requests for Hearing and Petitions for Party Status

(1) Persons who hold a groundwater right whose groundwater use will be limited and exempt users whose groundwater use will be limited as described in the Notice of Proposed Corrective Actions are parties to the contested case regarding a Notice of Proposed Corrective Actions. ¶

(2) Persons who do not hold groundwater rights or persons who are not an exempt user may seek party status in the contested case regarding a Notice of Proposed Corrective Actions by filing a Petition for Party Status with the Department by the deadline specified in the Notice of Proposed Corrective Actions. ¶

(a) A Petition for Party Status must be in writing, must be consistent with the provisions in OAR 137-003-0535 and OAR 137-003-0630 and must be timely filed in the Department's Salem office by the deadline described in 690-010-180(2)(I) in the Notice of Proposed Corrective Actions. The deadline shall be at least 120 days before the date set for the contested case hearing. ¶

(b) Consistent with the provisions of OAR 137-003-0535 the Department may identify persons who shall be parties or limited parties in a contested case hearing regarding the Notice of Proposed Corrective Actions. ¶

(3) Persons who hold a groundwater right whose groundwater use will be limited and exempt users whose groundwater use will be limited as described in the Notice of Proposed Corrective Actions may request a hearing to respond to the matters asserted in the Notice of Proposed Corrective Action(s). A Request for Hearing must be in writing and filed by the deadline specified in the Notice of Proposed Corrective Actions. Requests for Hearing shall include: ¶

(a) Name and address of any petitioners; ¶

(b) Name and address of the petitioner's attorney, if any; and ¶

(c) Identification of the water right held by the petitioner or identification of the exempt well and exempt uses, owned or used by the petitioner. ¶

(d) Requests for Hearing may also include: ¶

(A) A detailed description of how the corrective control provisions in the Notice of Proposed Corrective Actions would adversely affect or aggrieve petitioner supported by an affidavit stating such facts; ¶

(B) A detailed description of how the Notice of Proposed Corrective Actions is in error or deficient and how to correct the alleged error or deficiency; ¶

(C) A detailed description of whether the problem(s) that resulted in the designation of the critical ground water area may or may not be corrected by implementing the corrective control provisions specified in the agency notice and why; and ¶

(D) Any citation of legal authority supporting the petition, if known. ¶

(4) Requests for Hearings and Petitions for Party Status shall be considered filed on the date postmarked. Requests for Hearing or Petitions for Party Status sent by facsimile or hand-delivered are considered filed when received by the Department in its Salem office. In computing the period of time for timely filing, the last day of the time period shall be included, unless it is a scheduled day of office closure, in which event the time period runs until the end of the next day that the office is open. Scheduled days of office closure include, but are not limited to, Saturdays and legal holidays identified in ORS 187.010 and 187.020, including Sundays.

Statutory/Other Authority: ORS 536.027

Statutes/Other Implemented: ORS 536.027, ORS 537.742

ADOPT: 690-010-0200

RULE SUMMARY: This new rule describes the scope of a contested case hearing on a Notice of Proposed Action.

CHANGES TO RULE:

690-010-0200

Scope of Contested Case Hearing

(1) A contested case hearing shall be conducted to establish one or more of the corrective control provisions in ORS 537.742 that limits use of groundwater in the critical ground water area as provided in the Notice of Proposed Corrective Actions. ¶

(2) Except as otherwise provided in ORS 183.417(8) the Director shall create a list of issues to be heard in the contested case and shall refer that list to the Office of Administrative Hearings at the time the Notice of Proposed Corrective Actions is referred. ¶

(a) The list of issues shall include those issues raised in a timely-filed Request for Hearing with the information provided in 690-010-190(3)(e)(A) - (D) though issues may be categorized or summarized as furthers efficient administration of the contested case. ¶

(b) Parties to the contested case may seek amendment or clarification of the list of issues consistent with the provisions of OAR 137-003-0630.

Statutory/Other Authority: ORS 536.027, ORS 537.742

Statutes/Other Implemented: ORS 537.742

ADOPT: 690-010-0210

RULE SUMMARY: This new rule describes the process and requirements of a contested case proceeding on a Notice of Proposed Corrective Action.

CHANGES TO RULE:

690-010-0210

Conduct of Contested Case

(1) The conduct of the contested case regarding the Notice of Proposed Corrective Action(s) shall be governed by OAR 137-003-0501 to 137-003-0700 except as otherwise provided in these rules. ¶

(2) The Department shall refer the contested case to the Office of Administrative Hearings as provided in OAR 137-003-0515. ¶

(3) The Department shall post on its webpage the information contained in its referral to the Office of Administrative Hearings and may also post maps, reports or any other information supporting the Notice of Proposed Corrective Actions including links to information referred to in the Notice of Proposed Corrective Actions. ¶

(4) Due to the extensive scope of the contested case hearing and the large number of parties, the availability of the information posted as provided in subsection (3), and the availability of public record requests pursuant to Oregon's Public Records Law, discovery against the Department is only as provided in OAR 137-003-0566(1)(a) - (c). ¶

(5) Service and filing of documents in the contested case hearing may be by electronic means only as directed and allowed by the Administrative Law Judge.

Statutory/Other Authority: ORS 536.027, ORS 537.742

Statutes/Other Implemented: ORS 537.742

ADOPT: 690-010-0220

RULE SUMMARY: This new rule describes the process and requirements for filing exceptions to proposed orders and the Commission's review and response to such exceptions.

CHANGES TO RULE:

690-010-0220

Exceptions to Proposed Order

(1) Exceptions to the Proposed Order issued by the Administrative Law Judge after a contested case hearing must be filed with the Department in its Salem office within 60 days following the date of service of the Proposed Order. Parties must mail or hand-deliver a hard copy of their exceptions to the Department at its Salem offices and must also email an electronic copy to all the email addresses listed on the Certificate of Service. ¶

(2) The Commission must consider timely-filed exceptions but need not individually address each exception in any final order issued. The Commission may form a subcommittee of Commission members to review the exceptions and may provide a report to the Commission prior to the Commission issuing a final order.

Statutory/Other Authority: ORS 536.027, ORS 537.742

Statutes/Other Implemented: ORS 537.742

ADOPT: 690-010-0230

RULE SUMMARY: This new rule describes the requirements for a final order issued at the conclusion of a contested case hearing.

CHANGES TO RULE:

690-010-0230

Final Order in Contested Case

(1) Upon conclusion of the contested case hearing, including the consideration of exceptions filed against a proposed order issued by the administrative law judge, the Commission shall issue a final order in contested case.

¶

(2) If, after consideration of the contested case record, the Commission finds that the factors that resulted in the designation of a critical ground water area under ORS 537.730 can be resolved by implementing one or more of the corrective control measures specified in the Notice of Proposed Corrective Actions, the Commission shall issue a final order establishing one or more of the proposed corrective control provisions which may include limitations on the use of groundwater by those holding groundwater rights or exempt users. ¶

(3) Final orders in contested case must be consistent with ORS 183.650 and OAR 137-003-0665 and directed to the named parties in the contested case proceeding. ¶

(4) Final orders in default issued to a party in the contested case hearing must be consistent with OAR 137-003-0670. ¶

(5) The Commission's final order in contested case is appealable to the Oregon Court of Appeals pursuant to ORS 183.482 and ORS 536.075.

Statutory/Other Authority: ORS 536.027, ORS 537.742

Statutes/Other Implemented: ORS 537.742

ADOPT: 690-010-0240

RULE SUMMARY: This new rule describes the procedures for making changes to rules for existing Critical Ground water Areas.

CHANGES TO RULE:

690-010-0240

Procedure for Making Changes to Existing Critical Ground Water Area

(1) Where a critical ground water area is established and described in rule only, the Commission may modify an existing critical ground water area designation by amending the basin program rules pursuant to the process in ORS 536.300 - 340 and ORS 183.335. ¶

(2) Where a critical ground water area is established by an order or proclamation that is referenced in a basin program rule, the Commission may amend the basin program rule referencing the critical ground water area order or proclamation so as to confirm or modify the order's or proclamation's provisions governing designation of the critical ground water area or the establishment of corrective control provisions. Any rulemaking as provided in subsection (2) does not amend an order or proclamation as it directs the disposition of individual rights adjudicated in the order or proclamation. ¶

(3) Insofar as critical ground water area rules, orders or proclamations are amended to establish new or amended critical area designations or new or amended corrective control measures such corrective control measures may apply: ¶

(a) To those rights previously adjudicated in a critical ground water area order or proclamation only upon completion of a contested case initiated pursuant to ORS 537.742 and ORS 183; ¶

(b) To pending groundwater applications and present groundwater rights, only upon completion of a contested case initiated pursuant to ORS 537.742 and ORS chapter 183.

Statutory/Other Authority: ORS 536.027, ORS 537.730

Statutes/Other Implemented: ORS 537.730